

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JAMES DRAIN and RACHEL DRAIN, *et al.*,

Plaintiffs,

Civ. No. 04-0399 MV/KBM

vs.

WELLS FARGO BANK, MINNESOTA,
NA, as TRUSTEE for ITLA MORTG.,
LOAN SECURITIZATION 2002-1,LLC, and
ACCREDITED HOME LENDERS INC., and
FAIRBANKS CAPITAL CORP., UTAH and
its Director, BASMAJIAN T. DOYLE,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Defendants/Counter-Plaintiffs Fairbanks Capital Corp. and Wells Fargo Bank's Motion for Clarification of Order, filed March 9, 2006, [Doc. No. 230]. In their motion, Defendants/Counter-Plaintiffs seek to clarify that the March 2, 2006 Amended Memorandum Opinion and Order that dismissed Plaintiffs' claims with prejudice as a sanction did not dismiss Defendants/Counter-Plaintiffs' counterclaims. In their motion, Defendants/Counter-Plaintiffs stipulate to the dismissal without prejudice of their counterclaims. Plaintiffs did not file a response to this motion.

IT IS THEREFORE ORDERED that Defendants/Counter-Plaintiffs Fairbanks Capital Corp. and Wells Fargo Bank's Motion for Clarification of Order, filed March 9, 2006, [Doc. No. 230] is **GRANTED**. It is hereby clarified that the Court's March 2, 2006 Amended Memorandum Opinion and Order did not dismiss Defendants/Counter-Plaintiffs Fairbanks Capital

Corp. and Wells Fargo Bank's counterclaims.

IT IS FURTHER ORDERED that Defendants/Counter-Plaintiffs Fairbanks Capital Corp. and Wells Fargo Bank's counterclaims are hereby dismissed without prejudice.

Dated this 28th day of March, 2006.



MARTHA VAZQUEZ
U. S. DISTRICT COURT JUDGE

Attorney for Plaintiffs:

Mike Bello, Esq.

Attorneys for Defendants:

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Dylan O'Reilly, Esq.